

FCC Received November 17, 1994 @ 12:48 p.m.  
Diana G. Bradshaw

ORIGINAL

RECEIVED

TRANSCRIPT OF PROCEEDINGS

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the matter of:

ELEHUE KAWIKA FREEMON and  
LUCILLE K. FREEMON,  
Complainants,

v.

AMERICAN TELEPHONE AND TELEGRAPH CO.,  
Defendant

CC DOCKET NO. 94-89

DATE OF CONFERENCE: November 10, 1994

VOLUME: 1

PLACE OF CONFERENCE: Washington, D.C.

PAGES: 1-46

FREE STATE REPORTING, INC.  
Court Reporting Depositions  
D.C. Area (301) 261-1902  
Balt. & Annap. (410) 974-0947

RECEIVED

1

DEC - 6 1994

Before the  
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

-----)  
In the matter of: )  
 )  
Elehue Kawika Freemon and )  
Lucille K. Freemon, )  
Complainants, )  
 )  
v. )  
 )  
American Telephone and Telegraph )  
Company, )  
Defendant )  
-----)

CC DOCKET NO. 94-89

The above-entitled matter come on for pre-hearing conference pursuant to Notice before Judge Walter C. Miller, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 1, on Thursday, November 10, 1994 at 9:16 a.m.

APPEARANCES:

On behalf of FCC:

KEITH NICHOLS, Esquire  
Common Carrier Bureau  
1250 23rd Street, N.W., Plaza Level  
Room 155  
Washington, D.C. 20554

On behalf of AT&T

PETER H. JACOBY, Esquire  
295 North Maple Avenue, Room 3245F3  
Basking Ridge, New Jersey 07920

On behalf of Elehue K. Freemon:

(Pro se)  
P. O. Box 77  
Big Bear Lake, California 92315

FREE STATE REPORTING, INC.  
Court Reporting Depositions  
D.C. Area (301) 261-1902  
Balt. & Annap. (410) 974-0947

## I N D E X

	<u>Page:</u>
1	
2	
3	Opening by Judge Miller 3
4	Discussion between Judge Miller and Mr. Freemon 4
5	Statememt by Mr. Jacoby 14
6	Statement by Mr. Nichols 18
7	Closing by Judge Miller 41
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	Conference Began: 9:16 a.m. Conference Ended: 10:30 a.m.

FREE STATE REPORTING, INC.  
Court Reporting Depositions  
D.C. Area (301) 261-1902  
Balt. & Annap. (410) 974-0947

## P R O C E E D I N G S

(9:16 a.m.)

JUDGE MILLER: On the record, this is the date for the pre-hearing conference in Common Carrier Docket 94-89 in the matter of Elehue Kawika Freemon and Lucille K. Freemon, complainants versus AT&T Corporation, defendant and we're here today to exchange the direct case exhibits and otherwise firm this case up for hearing. Before we get started, let's take some notices of appearance. For complainant Elehue K. Freemon.

MR. FREEMON: Yes.

JUDGE MILLER: You're representing yourself, pro se.

MR. FREEMON: Yes.

JUDGE MILLER: For complainant Lucille K. Freemon, let the record reflect that there was no response. For defendant, American Telephone and Telegraph Company -- AT&T Corporation.

MR. JACOBY: Good morning, Your Honor, Peter Jacoby from the AT&T legal department.

JUDGE MILLER: For the Chief Common Carrier Bureau.

MR. NICHOLS: Keith Nichols with the Common Carrier Bureau, Your Honor.

JUDGE MILLER: All right, on August 19, 1994 I issued a pre-hearing order in this case, that's FCC 94M-81-481, let's use that order as our conference agenda and if

1 | there's anything that we don't cover that way that you think  
2 | we should cover, feel free to bring it up either at the end of  
3 | the conference or when we reach the appropriate paragraph in  
4 | the pre-hearing order. Paragraph 2 deals with notices of  
5 | appearance and my records indicate that we have got some  
6 | problems with notices of appearance, most significantly with  
7 | complainant Lucille K. Freemon's notice of appearance and we  
8 | might as well get those straightened out right now. Let me  
9 | ask some questions and maybe the -- to form a framework and  
10 | then we can have our discussion and I'll entertain any motions  
11 | that need to be entertained. I have before me a notice of  
12 | hearing, semicolon; appearances that was filed with the  
13 | Commission on September 1, 1994 and it purports to have the  
14 | signature of Lucille K. Freemon on it. My first question is,  
15 | who really signed that document?

16 |           MR. FREEMON: I did, Elehue Freemon.

17 |           JUDGE MILLER: There is a -- in the formal complaint  
18 | that helped initiate this proceeding, there is an affidavit, I  
19 | think it bears the date February 9, 1989 and this has a --  
20 | this purportedly is signed by a Lucille K. Freemon. Who  
21 | signed that document?

22 |           MR. FREEMON: Lucille K. Freemon.

23 |           JUDGE MILLER: She signed that document

24 |           MR. FREEMON: She signed the affidavit, yeah.

25 |           JUDGE MILLER: Now, I am in the possession of a

1 motion to -- motion filed by AT&T for the modification of the  
2 settlement conference procedures in this case and since it was  
3 a joint motion that required the signatures of all three party  
4 and there is a signature on the first page 3 signature page of  
5 that joint motion that purports to be the signature of  
6 Lucille K. Freemon, who signed that document?

7 MR. FREEMON: She did.

8 JUDGE MILLER: All right, now, technically we are in  
9 a position today where we do not have a notice of appearance  
10 signed by Lucille K. Freemon and I'm no handwriting expert but  
11 if Elehue Freemon signed his notice of appearance it was --  
12 there was a distinct effort made to make Lucille K. Freemon's  
13 look different from Elehue K. Freemon's.

14 MR. FREEMON: I'm sorry, could you repeat that  
15 again?

16 JUDGE MILLER: Yes, there is no indication on  
17 Lucille K. Freemon's so-called notice of appearance that  
18 somebody signed for her, nor is there any indic -- no -- and  
19 there is a distinct indication, since you've told me that you  
20 signed it, that Elehue K. Freemon attempted to make Lucille K.  
21 Freemon's signature look different from his own. Take a look  
22 at them.

23 MR. FREEMON: No, I'm trying to understand.

24 JUDGE MILLER: Let the record reflect that I'm  
25 showing the pro se a -- and I'm saying that this signature,

1 whoever wrote that signature tried to make it look different  
2 from that signature.

3 MR. FREEMON: Yes, this is my sign -- well, that's  
4 my signature.

5 JUDGE MILLER: That is your signature and that's  
6 your writing, too.

7 MR. FREEMON: This is my writing.

8 JUDGE MILLER: And you attempted to make it look  
9 different, you attempted to make it look like Lucille K.  
10 Freemon's signature, didn't you?

11 MR. FREEMON: Yes, it was my --

12 JUDGE MILLER: Why did you do that?

13 MR. FREEMON: It was a practice of my family for  
14 many years that if we do sign our parents's signature that we  
15 would sign it, the only difference that in doing this I wasn't  
16 sure if I should or not. We usually initial, you know, credit  
17 cards when we use our parents's credit cards to initial,  
18 sometimes our initials on the side of it. It would identify  
19 who actually used the credit card or whatever in our family.  
20 But we have signed our parents name under -- as we used it  
21 with their permission if we had to. I do not live in the same  
22 county, extreme ends of the state and my mother is -- has  
23 Alzheimer's and she has much difficulty --

24 JUDGE MILLER: Wait a minute, wait a minute, hold it  
25 just a second.

1 MR. FREEMON: Okay, I'm sorry.

2 JUDGE MILLER: Do you have a doctor's statement that  
3 your mother has Alzheimer's?

4 MR. FREEMON: No, I do not have it with me.

5 JUDGE MILLER: Did you present that at her  
6 deposition?

7 MR. FREEMON: I wasn't allowed in her deposition.

8 JUDGE MILLER: Did she present it at her deposition?

9 MR. FREEMON: No, she did not.

10 JUDGE MILLER: I haven't -- I -- and the reason,  
11 Mr. Freeman, this concerns me deeply is I have a mother who  
12 has Alzheimer's, she's in a nursing home up in Indiana,  
13 Pennsylvania and I'm aware of the problems that are associated  
14 with Alzheimer's and I don't think that unless you can show me  
15 that that condition exists as opposed to any -- some other  
16 type of short-term dementia, short-term memory dementia, I'm  
17 not going to accept your statement that she has it. She is a  
18 complainant in this case. Now, let's back off and talk a  
19 little bit about that. You found it advantageous to have her  
20 a complainant in this case up until recently, didn't you?

21 MR. FREEMON: I did because I did not understand the  
22 ramifications of how this worked. Since a party and a witness  
23 at that time, I didn't know what the difference was --

24 JUDGE MILLER: You didn't know that this would give  
25 you a two on one as far as first-hand witnesses are concerned



1 about the event, that you would have yourself and your mother  
2 purportedly participating in the event while the defendant  
3 would only be able to present the telephone operator, you  
4 weren't aware of that?

5 MR. FREEMON: No, I'm not a lawyer.

6 JUDGE MILLER: Well, it doesn't take a lawyer to  
7 figure that out, does it? Any layman can figure that out,  
8 can't they?

9 MR. FREEMON: At the time, I did not know the  
10 difference between a party and a witness and --

11 JUDGE MILLER: Well, the point -- let me go then --  
12 let me turn to your answer that you filed in this proceeding.

13 MR. FREEMON: That's --

14 JUDGE MILLER: Just a second, Mr. Freemon.

15 MR. FREEMON: Okay.

16 JUDGE MILLER: No, I'm going -- I'm sorry, I'll --  
17 we'll refer you to your --

18 MR. FREEMON: Answer is AT&T's.

19 JUDGE MILLER: I understand AT&T's answer. All  
20 right, well, let me proceed. I'll come back to this. Let me  
21 ask you this question, who prepared Lucille K. Freemon's  
22 affidavit that is attached to your complaint?

23 MR. FREEMON: My mother told me her version, I had  
24 it typed out, she proofread it and I did it again --

25 JUDGE MILLER: Who typed it up?

1           MR. FREEMON: I did the typing, and then we -- she  
2 read it again and then we took it to the notary public. There  
3 was only one draft besides the proofreading and then I drafted  
4 the final or -- yeah, draft the final.

5           JUDGE MILLER: All right, let me ask you, has  
6 Lucille K. Freemon signed her deposition?

7           MR. FREEMON: She did not, because of her sickness,  
8 I had to come up from where -- I had to travel all the way  
9 back to my mother's house to find out what happened. It took  
10 me a half a day to find the deposition, it was buried under  
11 just -- she forgets where she puts things and I asked her did  
12 she read it, and from my reports of the family she became  
13 very, very upset, one of the reasons why they called me to  
14 come down and find out what happened. She would -- didn't  
15 want to -- she never finished it my understanding and I  
16 thought it would be better to expedite it by just turning it  
17 in and I made my corrections but, of course, I didn't make her  
18 corrections. I did read her deposition, yes, but I didn't  
19 make any corrections in it so I have to leave that as it was.

20           JUDGE MILLER: All right, you filed a motion to  
21 accept a late-file pleading and I believe that's dated, let me  
22 just check here, July 30, 1991 and there you have, on the  
23 first page of that -- actually page 5, you start off -- and  
24 you start off a list called abbreviations and in No. 4 is  
25 listed as Ms., M-S, Nancy Zolinda (Phonetic). Now, who in

1 heaven's name in Nancy Zolinda?

2 MR. FREEMON: I think it's a misspelling, it's the  
3 operator's name.

4 JUDGE MILLER: And again at paragraph 9 you refer to  
5 a Ms. N. Zolinda.

6 MR. FREEMON: It was a misprint.

7 JUDGE MILLER: Now, attached to that motion,  
8 complainant's motion to accept late-file pleadings dated  
9 July 30, 1991, there -- on page 3 there's an order. Now, my  
10 copy of that order is a 2-page order and my copy of that order  
11 is not signed but it's -- it bears a place that Mary Beth  
12 Richards could sign it, Chief Enforcement Division. Did you  
13 prepare this order?

14 MR. FREEMON: Yes, I prepare all the orders.

15 JUDGE MILLER: So that you filed a motion to accept  
16 late-file pleading and you prepared an order for Mary Beth  
17 with your signature, is that understanding what you did?

18 MR. FREEMON: With my signature, it's blank?

19 JUDGE MILLER: With Mary Beth Richards's signature.

20 MR. FREEMON: For her signature.

21 JUDGE MILLER: Yes, that you prepared that.

22 MR. FREEMON: Yes, yes, for her signature if she  
23 accepted it.

24 JUDGE MILLER: Now, did she ever sign it?

25 MR. FREEMON: I never had a reply on that, no.

1 JUDGE MILLER: You tell me you're not a lawyer, you  
2 certainly knew how to attach an order to a pleading, didn't  
3 you?

4 MR. FREEMON: I copied AT&T's and I did ask people  
5 in the law libraries and tried to get examples of it.

6 JUDGE MILLER: Uh-huh.

7 MR. FREEMON: You can learn a lot by other people.

8 JUDGE MILLER: All right.

9 MR. FREEMON: Later I found out it was to help  
10 expedite it if they accepted it, it was a format that they  
11 could use and alter as they wish, it was to ease the paper  
12 work itself through the system. Whether they signed it or  
13 not, it was there as a tool to -- again to refer to --

14 JUDGE MILLER: Well, your mother's not here today.

15 MR. FREEMON: She is not.

16 JUDGE MILLER: Now, you've submitted documents to  
17 the Common Carrier Bureau that indicated that she was a party,  
18 you indicated that she signed an affidavit, you had all of the  
19 -- and there is a -- I'm trying to find the place where you  
20 repeat that she is a -- in your late pleading reply on  
21 August 28, 1991 -- that's the filing date, it's dated  
22 August 5th, at page II, which is actually page 3 of that  
23 document, you state that, therefore the issues here are not  
24 just between Mr. Elehue K. Freemon or Mrs. Lucille K. Freemon  
25 and AT&T but the right of choice, the right of privacy,

1 etcetera, where they're violated by the government. You are  
2 indicating there as late as 1991 that she was still a  
3 complainant. Now, is she or isn't she?

4 MR. FREEMON: As far as I know, at this stage she is  
5 not. She is, again --

6 JUDGE MILLER: When did you first find out that she  
7 wasn't going to -- that she didn't want to be a complainant?

8 MR. FREEMON: It's -- Your Honor, to this time and  
9 now, laymen -- and I don't even know if I --

10 JUDGE MILLER: Well, talk to some lawyers -- your --  
11 or do once again what you were able to come up with an order.

12 MR. FREEMON: This is way after this has started and  
13 just recently more has come out because I never asked or was  
14 concerned, what's the difference between a party and a  
15 witness. As far as we're concerned on the street when you  
16 have -- participate in an act, you're a party to --

17 JUDGE MILLER: Don't sell.

18 MR. FREEMON: It's not --

19 JUDGE MILLER: It don't sell, Mr. --

20 MR. FREEMON: Okay, I'm not --

21 JUDGE MILLER: You -- what does sell to me is you  
22 submitted to the Common Carrier Bureau --

23 MR. FREEMON: Yes.

24 JUDGE MILLER: -- fraudulent documents in the hopes  
25 that they would process and give you a favorable ruling.

1 That's what I see, Mr. Freemon.

2 MR. FREEMON: I do have a question for you, is it  
3 possible now?

4 JUDGE MILLER: No.

5 MR. FREEMON: Okay, a witness and a party, I don't  
6 know the difference --

7 JUDGE MILLER: You were prosecuting this and you can  
8 read a caption, can't you?

9 MR. FREEMON: Caption, yes.

10 JUDGE MILLER: And it -- both of you were in the  
11 caption as complainants, weren't you?

12 MR. FREEMON: Both of us were --

13 JUDGE MILLER: And you were happy with that, weren't  
14 you?

15 MR. FREEMON: I understood she was on the other end  
16 of the phone, she participated on the phone call. She's a  
17 witness and being a witness, being a party, I --

18 JUDGE MILLER: She would share in any monies you  
19 obtained, wouldn't she?

20 MR. FREEMON: Not necessarily, she was -- the idea  
21 was this, I was the party that was hurt, my mother was on the  
22 other side of the phone, she is, as far as the common person  
23 host, we're parties to an action or a situation and she's also  
24 a witness, I --

25 JUDGE MILLER: Well, that doesn't stop her from

1 being a witness even though we may dismiss her this morning.

2 This doesn't stop her from being a witness.

3 MR. FREEMON: Oh, no, I --

4 JUDGE MILLER: I mean, if you choose to present her,  
5 we'll get to where the burdens are in a minute. You've heard  
6 Mr. Freemon say that she's no longer a party to this  
7 proceeding. Do you have anything to say, Mr. Jacoby?

8 MR. JACOBY: Yes, Your Honor, thank you. First of  
9 all, AT&T agrees with Your Honor that the posture of the case  
10 is, you know, that we share doubts about the bona fides of  
11 Mrs. Freemon's participation in this case at least since it  
12 was designated for hearing, before that we didn't have a lot  
13 of knowledge about what her active role but now that we've had  
14 the opportunity to take depositions of both Mr. Freemon and of  
15 Mrs. Freemon, we've learned, as Your Honor has pointed out,  
16 there is -- there are materials here that she has not seen or  
17 that have been signed on her behalf, et cetera. Having said  
18 that, however, you know, and I never thought I'd be sitting  
19 here in a hearing room saying, don't dismiss Mrs. Freemon out  
20 as a party, but I think it's remarkable that we've come to  
21 this. AT&T feels that it could be severely prejudiced in two  
22 respects by such a ruling. Let me explain, Your Honor, first  
23 of all, as we said, what Mrs. Freemon's role in this case has  
24 been, to say the least, equivocal, her awareneess of the  
25 present posture of the proceedings is unclear and whether

1 she's suffering from any mental impairment that's been alleged  
2 but, as Your Honor points out, we don't have, you know,  
3 definitive medical proof of that at this stage. We are  
4 concerned that if a procedural ruling were entered dismissing  
5 her as a party for having failed to show at this conference,  
6 for having failed to submit a timely an authentic notice of  
7 appearance and other, you know, documents in the course of the  
8 recent pre-hearing proceedings, that at a later time that  
9 ruling might be collaterally challenged by guardian ad litem  
10 or some other person and we'd end up in a situation where  
11 having tried this case once involving Mr. Freemon, I have no  
12 particular wish, and I don't think anybody else in this room  
13 has any wish, to try it a second time as an action brought by  
14 Mrs. Freemon or some guardian or other person acting on her  
15 behalf. That's point one in terms of prejudice. The other is  
16 that for good or for ill, this case has been litigated right  
17 up to this point today on the theory that Mrs. Freemon was a  
18 bona fide party and I'm --

19 JUDGE MILLER: That's the reason it's my -- that's  
20 the reason I got a problem.

21 MR. JACOBY: Well, I understand that, Your Honor,  
22 and, you know, we are troubled, too, by the fact -- by the  
23 record here but the fact is, for example, when her deposition  
24 was taken, it was taken in the role of a party so that  
25 anything we extracted from her there was an admission which we



1 can and do intend to use in the hearing of this case as part  
2 of our affirmative case, in fact. If she were now stricken as  
3 a party and, as Mr. Freemon pointed out earlier, there was a  
4 sequestration order entered and I think it made good sense to  
5 do it that way at the time, we might be faced with some  
6 questions about the admissability of a deposition where he was  
7 not available to cross-examine or the like. Rather than face  
8 those kinds of challenges, we think at this point,  
9 Mrs. Freemon has not, in fact, claimed any damage, if you go  
10 through the complaint, Mr. Freemon is the one asking all the  
11 money, she's -- you know, now, she may, as you point out, Your  
12 Honor, share in it derivatively because family members  
13 sometimes share those this, but as a practical matter, she can  
14 claim no monetary damage from AT&T because she hasn't up to  
15 this point. So given that, given -- you know, and if she were  
16 stricken as a party there would be the great possibility that  
17 not just Mr. Freemon but that we might want her brought from  
18 California to be a witness in this case and I'm extremely  
19 reluctant to impose those kinds of burdens on an elderly woman  
20 who is allegedly suffering from a very terrible disease and so  
21 rather than do that, if I can bring it to a close, Your Honor,  
22 while AT&T shares your concerns which we think are eminently  
23 well-founded about her role at this trial, we don't feel that  
24 she would be prejudiced by continuing to be -- you know, in as  
25 a party.

1 JUDGE MILLER: And she's not here today.

2 MR. JACOBY: Well, I understand that, Your Honor,  
3 but I'm saying if this proceeds to a merits judgement and if  
4 that merits judgement is against her, I don't think she can  
5 feel that, you know, that anything untowards has happened to  
6 her by keeping her in the case whereas she might claim the  
7 contrary if she were dismissed out on procedural grounds and  
8 certainly we think that it would, you know, it would avoid a  
9 lot of questions that could be later raised about the  
10 evidentiary and other procedural issues in the case.

11 JUDGE MILLER: All right.

12 MR. JACOBY: So that's our position, Your Honor.

13 JUDGE MILLER: All right, let me ask you then this,  
14 Mr. Elehue Freeman, the -- when you said -- and you named  
15 twice, two indications here, the affidavit and this last  
16 motion that was filed by Mr. Jacoby, joint motion, that those  
17 signatures were, in fact, Lucille K. Freeman's signature,  
18 right?

19 MR. FREEMON: On the affidavit.

20 JUDGE MILLER: On the affidavit accompanying the  
21 complaint.

22 MR. FREEMON: Yes, that's her signature.

23 JUDGE MILLER: And on the joint motion that was  
24 filed by Mr. Jacoby she signed that document, too.

25 MR. FREEMON: She did sign it, the reason why it was

1 late because again I had to come all the way down to get her  
2 to sign it.

3 JUDGE MILLER: All right, now, when -- so it's  
4 clear, neither of those documents, just so we're real clear on  
5 it, neither of those documents were signed by Edna Freemon or  
6 Evelyn Freemon.

7 MR. FREEMON: No.

8 JUDGE MILLER: All right, you've -- Mr. Nichols.

9 MR. NICHOLS: Sir.

10 JUDGE MILLER: You have anything you want to say  
11 about this problem?

12 MR. NICHOLS: Well, with all respect to AT&T's  
13 position, Your Honor, the Bureau has no objection to  
14 dismissing Mrs. Freemon as a party.

15 MR. JACOBY: Given its very limited role in this  
16 case, Your Honor, it doesn't seem to me the Bureau really has  
17 a stake in the ground here. AT&T has a vital interest, we  
18 deposed Mrs. Freemon at great expense in Los Angeles.

19 JUDGE MILLER: I understand that except that, you  
20 know, I have made the point here, Mr. Jacoby, that there may  
21 have been a lot of processing since 1988 and 1994 on false  
22 assumptions and, you know, that -- maybe -- I mean, as you're  
23 concerned with AT&T's costs, I have to be concerned with the  
24 taxpayers costs which it seems to me there's been a lot of --  
25 a lot of time spent including yours and including --

1 MR. JACOBY: Yes, Your Honor, I have -- most of --

2 JUDGE MILLER: And -- on a false -- on a fraudulent  
3 assumption.

4 MR. JACOBY: Admittedly, Your Honor, but I will say  
5 this, we probably would have had to spend almost as much time,  
6 probably not as much, but a considerable amount of time if  
7 this action has simply been prosecuted by Mr. Freemon in his  
8 own name as the sole party and it seems to be this, that if --  
9 you know, if fraud has been perpetrated on the processes of  
10 this Commission, I'm not going to make a judgement on that,  
11 but Your Honor has raised some serious questions, it seems to  
12 me that the dispositive sanction of dismissing Mrs. Freemon  
13 may have had little or no role -- willingness to play a role  
14 in this case or a limited willingness to play a role in this  
15 case, actually will misplace the smarter sanction. We, AT&T,  
16 because of the prejudices I've described to you including  
17 evidentiary prejudice in this hearing, were -- you know, would  
18 be as -- probably more badly hurt than Mrs. Freemon. If there  
19 are questions of false statements having been made to the  
20 Commission, perhaps those could be addressed in collateral  
21 proceedings.

22 JUDGE MILLER: All right --

23 MR. JACOBY: I guess what -- Your Honor, could I  
24 propose a way through the thicket?

25 JUDGE MILLER: Yeah.

1           MR. JACOBY: Okay, it seems to me this, that if, on  
2 the record here and Mr. Freemon will stipulate to the  
3 admissibility for all purposes of Mrs. Freemon's deposition  
4 testimony taken October 5, 1994 in this case, then, you know,  
5 as if she were in on a party witness in effect, we'll  
6 stipulate to that here and now, then we feel that the  
7 evidentiary prejudice that we were talking about, the second  
8 of the two points I talked about, Your Honor, will be  
9 mitigated or alleviated and we'd be, I guess, willing to take  
10 the risk of somebody trying to resuscitate her action at a  
11 later date and we'll live with that.

12           JUDGE MILLER: Well, why don't you two people, after  
13 we finish the conference this morning, talk about that and if  
14 that isn't acceptable, we have an evidentiary admission  
15 session coming up and when that document is -- I hope it will  
16 be offered, and at that time you can tell me what you've  
17 agreed upon and I'll rule but I'll -- what I'll do is I will  
18 not dismiss her this morning --

19           MR. JACOBY: You'll reserve decision, Your Honor?

20           JUDGE MILLER: -- even though she's absent, even  
21 though her son now says that she's not a party to the  
22 proceeding.

23           MR. JACOBY: Okay, we'll discuss that, Mr. Freemon,  
24 then after the conclusion of this hearing today.

25           JUDGE MILLER: All right, paragraph 3, anybody want

1 to say anything more on paragraph 2, the appearances? Do you  
2 want -- have anything more to say?

3 MR. FREEMON: I -- no, I don't.

4 JUDGE MILLER: All right, paragraph 3 of the pre-  
5 hearing order merely reiterates the pre-hearing instructions  
6 where the burden of proceeding and the burden of proof lies on  
7 all six designated issues. Do you have any questions about  
8 the burden -- where the burden of proof and the burden of  
9 proceeding lie and to you know what they are,  
10 Mr. Elehue Freeman?

11 MR. FREEMON: I'm not clear, the burden of proof I  
12 understand more than the burden of proceeding, I'm very foggy  
13 about the proceedings.

14 JUDGE MILLER: Well, let me say this, I send you a  
15 message -- I tried to send you a message right off the bat in  
16 this case, the pre-hearing order in which I told you, look, if  
17 you intend to try to proceed in this case you better get  
18 yourself a lawyer, I mean, I don't generally -- I don't  
19 generally get involved in the cases to this extent, but when I  
20 do have a pro se occasionally I'll tell them. Now, if you had  
21 -- if you needed to know what the burden of proceeding and the  
22 burden of proof was, you have had at least since that day, if  
23 not earlier, if the Bureau didn't indicate to you that it  
24 might be wise to get a lawyer, you have had since then. So  
25 I'm going to have to proceed on the basis that you know what

1 the burden of proof and the burden of proceeding are and you  
2 have known since at least the pre-hearing order. That's not  
3 unfair, is it?

4 MR. FREEMON: I'm not a lawyer, I don't know, I'm  
5 just trying to learn.

6 JUDGE MILLER: Uh-huh.

7 MR. FREEMON: If I had the money to afford a lawyer,  
8 I would have gotten one a long time ago.

9 JUDGE MILLER: Uh-huh, all right, do you have any  
10 problems with paragraph 3 of the pre-hearing order,  
11 Mr. Jacoby?

12 MR. JACOBY: No problems with it, Your Honor, I  
13 think maybe this is the time I would point out that AT&T --  
14 the issues are perfectly clear, the burdens are perfectly  
15 clear at AT&T. We do intend promptly after the exchange of  
16 the direct cases today by -- under rule, I guess, is 1.241, to  
17 file a motion for a summary decision. We have some legal  
18 defenses to this case, we also think that there are no genuine  
19 issues of material fact and we would be filing that in  
20 accordance with the rule 20 days before the scheduled hearing  
21 date.

22 JUDGE MILLER: You think you can make a showing that  
23 there's no genuine issues of fact to me, Mr. Jacoby?

24 MR. JACOBY: Remarkably, Your Honor, yes, I can and  
25 I think can show both that there are no genuine issues of

1 material fact regarding the underlying events and I think that  
2 AT&T can also show that regardless of the parties narration of  
3 events even if Your Honor were to fully believe Mr. Freemon's  
4 version of events, that they do not state a claim and they are  
5 barred both the applicable statute of limitations and by the  
6 fact that the statute does not punish the conduct for which  
7 Mr. Freemon is alleging we are culpable and we will explain  
8 all of that in our papers.

9 JUDGE MILLER: All right, all right --

10 MR. JACOBY: But I'm not suggesting that Your Honor  
11 not go forward with the December 12th through 24th hearings --

12 JUDGE MILLER: No, I know, I understand.

13 MR. JACOBY: -- I'm just saying we're going to have  
14 that in the record to preserve our defenses and so forth.

15 JUDGE MILLER: I understand, I understand, now,  
16 paragraph 4 places the burden of proceeding on you on any  
17 affirmative defenses that you elect to raise, you're prepared  
18 to proceed with that, aren't you?

19 MR. JACOBY: Yes, Your Honor.

20 JUDGE MILLER: All right, paragraph 5 sets out the  
21 Judge's -- trial Judge's initial observations about the scope  
22 and the kind of evidence we'd need but the important language  
23 there was -- it's no way impinging on -- with the materials  
24 that you people elect to proceed with. There is one item that  
25 might or might not prove valuable that the trial Judge failed



1 to mention because he was not familiar with the case at that  
2 time but maybe it might -- I don't know whether it would be  
3 wise to have Mr. Elehue Freemon's phone bills for May, June  
4 and July of 1988 and the reason I say that is I'll make a  
5 reference to the original complaint filed on August 16, 1990  
6 and on page 4 of that document there is a reference to a call  
7 made the next day, May 31, 1988 and if there's any record of  
8 that call it might be -- it might prove fruitful to everybody  
9 but I'm not going to -- I'm not demanding it, I'm just  
10 pointing it out. Do you see what I'm talking about,  
11 Mr. Jacoby?

12 MR. JACOBY: Yes, I do and the next day, May 31,  
13 1988, I'm now reading from the bottom of page 4.

14 JUDGE MILLER: Yes.

15 MR. JACOBY: Right -- yes, I see the reference, Your  
16 Honor.

17 JUDGE MILLER: So what I'm saying is, while I  
18 thought it might be wise to have the phone bills of  
19 Mrs. Freemon, I don't know that that call was necessarily --  
20 it was probably made from the hospital in all --

21 MR. FREEMON: Yes, it was.

22 JUDGE MILLER: -- and I don't know whether it was a  
23 cash call or whether it was a call that was charged to  
24 Mr. Freemon's phone bill, I don't know. Yes, Mr. Freemon.

25 MR. FREEMON: In the hospital you -- to let you